

JOHN F. CORCORAN, CLERK
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) Civil Action No. 7:07cv157

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U.S.C. 405(g) At the time Becker filed his complaint, he stated that he resided in the Western District of Virginia; thus, venue was proper here. See id. Therefore, this matter was properly transferred to this court. See 28 U.S.C. § 1406(a) (which provides that “in the interest of justice, [a district court may] transfer . . . [a case filed in the improper venue] to any district or division in which it could have been brought.”)


However, 28 U.S.C. § 1406(a) does not provide a basis to transfer this case back to the Middle District of Florida simply because Becker has moved there. Likewise, 28 U.S.C. § 1404(a) provides no such basis for transfer.² Both sections only permit the court to transfer a matter to a district where the action could have been initially brought. Hoffman v. Blaski, 363 U.S. 335, 343-44 (1960) (stating that “the power of a District Court under § 1404(a) to transfer an action to another district is made to depend not upon the wish or waiver of the defendant but, rather, upon whether the transferee district was one in which the action ‘might have been brought’ by the plaintiff;” therefore if venue was not proper in the first instance the matter may not be transferred to that forum); Goldlwar, Inc. v. Heiman, 369 U.S. 463, 466-67 (1962) (holding that the purpose of § 1406(a) is to allow the court, in the interest of justice, to transfer a case filed in an improper forum to that forum in which the case should have originally been filed so as not to cause the plaintiff undue prejudice and to allow for the expeditious and orderly resolution of disputes). Although Florida may now be the most convenient forum for the plaintiff, plaintiff could not have properly brought this suit there because, at the time he filed his original complaint, he was a resident of the Western District of Virginia, and he did not move to

²Title 28, section 1404(a) provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.”

the Middle District of Florida until more than a year later. As such, the only proper forum was and remains in the Western District of Virginia.³

Plaintiff's motion for transfer will be **DENIED** by separate order.

Entered this 20th day of August, 2007.



Michael F. Urbanski
United States Magistrate Judge

³Becker cites Ryan v. Brady, 776 F.Supp. 1 (D.D.C. 1991), without comment, but his reliance on that case is misplaced. That case involved a challenge by an inmate to suspension of social security benefits while incarcerated. In Ryan, the court determined that as plaintiff never resided in the District of Columbia, there was no basis under 42 U.S.C. § 405(g) to bring the suit there. Likewise, under § 405(g), this suit may only be brought in the Western District of Virginia, where Becker resided at the time he filed suit.